

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
OFFICE OF FINANCIAL AND INSURANCE REGULATION
Before the Commissioner of Financial and Insurance Regulation

Dennis H. King, Jr.
Petitioner

v

Office of Financial and Insurance Regulation
Respondent

Case No. 11-827-L
Docket No. 11-000780-OFIR

Issued and entered
this 20th day of July 2012
by Randall S. Gregg
Deputy Commissioner

FINAL DECISION

I. BACKGROUND

This case concerns the application of Dennis H. King, Jr. (Petitioner) for a resident insurance producer license. The license was denied because the Petitioner was convicted of two felonies in 1991 and had failed to disclose the convictions on his license application.

Petitioner challenged the license denial. A hearing was scheduled for May 2, 2012. The Petitioner failed to appear for the hearing. The hearing proceeded in the Petitioner's absence. The administrative law judge issued a Proposal for Decision (PFD) recommending that the license denial be upheld.

The Petitioner did not file exceptions to the PFD. Michigan courts have long recognized that the failure to file exceptions constitutes a waiver of any objections not raised. *Attorney General v. Public Service Comm* 136 Mich App 52 (1984). The PFD is attached. The findings and recommendation in the Proposal for Decision are adopted.

II. FINDINGS OF FACT AND CONCLUSIONS OF LAW

Section 1239(1)(f) of the Michigan Insurance Code (Code), MCL 500. 1239(1)(f), provides:

(1) In addition to any other powers under this act, the commissioner...shall refuse to issue a license under section 1205 or 1206a, for any 1 or more of the following causes:

* * *

(f) Having been convicted of a felony.

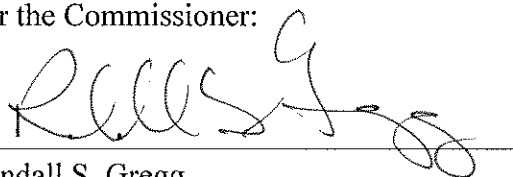
The Commissioner finds that, because the Petitioner has been convicted of a felony, he is ineligible to receive a Michigan insurance producer license.

III. ORDER

The refusal to issue an insurance producer license to Dennis H. King, Jr. is upheld.

R. Kevin Clinton
Commissioner

For the Commissioner:

A handwritten signature in black ink, appearing to read "R. S. Gregg", is written over a horizontal line.

Randall S. Gregg
Deputy Commissioner

STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM

IN THE MATTER OF:

Dennis H. King, Jr.,
Petitioner

v

Office of Financial and Insurance
Regulation,
Respondent

Docket No.: 11-000780-OFIR

Case No.: 11-827-L

Agency: Office of Financial &
Insurance Regulation

Case Type: OFIR/OFIS-Insurance

Filing Type: Appeal

Issued and entered
this 31st day of May, 2012

by:

Lauren G. Van Steel
Administrative Law Judge

PROPOSAL FOR DECISION

PROCEDURAL HISTORY

This proceeding under the Michigan Insurance Code of 1956, being 1956 PA 218, as amended, MCL 500.100 *et seq.* (hereafter "Insurance Code"), commenced with the issuance of a Notice of Hearing dated June 22, 2011, scheduling a contested case hearing for August 4, 2011. The Notice of Hearing was issued pursuant to a Request for Hearing received by the Michigan Administrative Hearing System on June 15, 2011, and an Order Referring Applicant's Petition for Contested Case Hearing to Appeal Agency Denial of Application for Insurance Producer License and Order to Respond dated June 14, 2011, issued by the Acting Chief Deputy Commissioner of the Office of Financial and Insurance Regulation under the provisions of the Insurance Code.

Attached to the Request for Hearing was a copy of a Notice of License Denial and Opportunity for Hearing, dated March 10, 2011, and a copy of the Applicant's Petition for Contested Case Hearing to Appeal Agency Denial of Application for Insurance Producer License, received April 12, 2011.

On August 4, 2011, the undersigned issued an Order Granting Adjournment at the request of Dennis H. King, Jr., Petitioner, rescheduling the hearing date to October 17, 2011. On October 18, 2011, the undersigned issued an Order Granting Adjournment at Petitioner's request, rescheduling the hearing date to January 31, 2012. On February 6, 2012, the undersigned issued an Order Granting Adjournment at Petitioner's request,

rescheduling the hearing date to May 2, 2012. The Order Granting Adjournment was sent with Proof of Service to Petitioner at his last known addresses of record.

On May 2, 2012, the hearing commenced as scheduled. At the hearing, William R. Peattie appeared as the staff attorney representative on behalf of the Office of Financial and Insurance Regulation, Respondent. Neither Petitioner, nor an attorney on his behalf, appeared at the hearing.

Respondent's representative requested to be allowed to proceed in Petitioner's absence pursuant to Section 72(1) of the Administrative Procedures Act (hereafter "APA"), being MCL 24.272(1). Further, Respondent's representative withdrew the allegation contained in the Notice of License Denial that the "Applicant [Petitioner] provided incorrect and materially untrue information in the license application" contrary to MCL 500.1239(1)(a), and retained the allegation that the "Applicant [Petitioner] . . . has been convicted of a felony" contrary to MCL 500.1239(1)(f).

In addition, Respondent's representative requested that a default be granted against Petitioner pursuant to Section 78(2) of the APA, being MCL 24.278(2). Sections 72(1) and 78(2) of the APA provide in pertinent part:

Sec. 72. (1) If a party fails to appear in a contested case after proper service of notice, the agency, if no adjournment is granted, may proceed with the hearing and make its decision in the absence of the party. MCL 24.72(1).

Sec. 78. (2) Except as otherwise provided by law, disposition may be made of a contested case by stipulation, agreed settlement, consent order, waiver, default or other method agreed upon by the parties. MCL 24.78(2).

In accordance with Sections 72(1) and 78(2) of the APA, the hearing proceeded in the absence of Petitioner and a default was granted against Petitioner. Respondent did not present any witnesses or offer any exhibits at the hearing. The record was closed at the conclusion of the hearing.

ISSUES AND APPLICABLE LAW

The central issue now presented is whether Respondent has properly denied Petitioner's application for a resident insurance producer license under Sections 1205(1)(b) and 1239(1)(f) of the Insurance Code. These sections provide in pertinent part:

Sec. 1205. (1) A person applying for a resident insurance producer license shall file with the commissioner the uniform application required by the commissioner and shall declare under penalty of refusal, suspension, or revocation of the

license that the statements made in the application are true, correct, and complete to the best of the individual's knowledge and belief. An application for a resident insurer producer license shall not be approved unless the commissioner finds that the individual meets all of the following: * * *

(b) Has not committed any act listed in section 1239(1). MCL 500.1205(1)(b).

Sec. 1239. (1) In addition to any other powers under this act . . . the commissioner shall refuse to issue a license under section 1205 or 1206a, for any 1 or more of the following causes: * * *

(f) Having been convicted of a felony. MCL 500.1239(1)(f).

FINDINGS OF FACT

Based on the entire record in this matter, including the pleadings and default granted for Respondent, the following findings of fact are established:

1. On or about January 7, 2011, Petitioner submitted an application to become licensed as a resident insurance producer in the state of Michigan.
2. Petitioner responded "no" on the application to the question asking, "Have you ever been convicted of a crime, had a judgment withheld or deferred, or are you currently charged with committing a crime?"
3. On September 27, 1991, Petitioner was convicted of felony breaking & entering -- a building with intent.
4. On November 5, 1991, Petitioner was convicted of felony breaking & entering -- a building with intent.
5. On or about March 10, 2011, Jean M. Boven, Deputy Commissioner, Licensing & Product Review Division within the Office of Financial and Insurance Regulation, Respondent, issued a Notice of License Denial.
6. On April 12, 2011, Petitioner submitted a petition for contested case hearing to appeal the Notice of License Denial.
7. A properly noticed hearing was held on May 2, 2012, at which Petitioner failed to appear and offer evidence in support of his appeal.

8. At the hearing held on May 2, 2012, Respondent withdrew the portion of the Notice of License Denial which alleges that information received shows that "Applicant [Petitioner] provided incorrect and materially untrue information in the license application".
9. At the hearing held on May 2, 2012, Respondent retained the portion of the Notice of License Denial which alleges that information received shows that "Applicant [Petitioner] . . . has been convicted of a felony".

CONCLUSIONS OF LAW

Respondent has the burden of proof in this matter to show by a preponderance of the evidence the legal basis for its action to deny Petitioner's application for licensure. See MCL 500.1239(2).

Under Sections 1205 and 1239 of the Insurance Code, *supra*, the Commissioner shall deny an application for a resident insurance producer license where an applicant has been convicted of a felony. See MCL 500.1205(1)(b) and MCL 500.1239(1)(f), as amended by 2008 PA 422 & 423, which amendments became effective on January 6, 2009, prior to the license application at issue here.

A default having been granted for Respondent against Petitioner under Section 78(2) of the APA, the allegations set forth in the Notice of License Denial are taken as true and proven. Under Section 72 of the APA, there is no requirement to provide a full evidentiary hearing when all the alleged facts are taken as true. *Smith v Lansing School Dist.*, 428 Mich 248; 406 NW2d 825 (1987).

Based on the above findings of fact and the default, it is concluded that Respondent has met its burden of proof. A preponderance of the evidence shows that Petitioner was properly denied licensure as a resident insurance producer in the state of Michigan under Sections 1205(1)(b) and 1239(1)(f) of the Insurance Code.

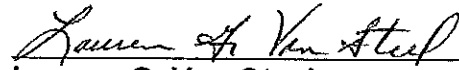
PROPOSED DECISION

Based on the above findings of fact and conclusions of law, the undersigned Administrative Law Judge proposes the following to the Commissioner:

1. That the above findings of fact and conclusions of law be adopted in the Commissioner's final decision and order;
2. That the Commissioner deny Petitioner's application for a resident insurance producer license under Sections 1205(1)(b) and 1239(1)(f) of the Insurance Code; and
3. That the Commissioner take any other action in this matter deemed appropriate under applicable provisions of the Insurance Code.

EXCEPTIONS

Any Exceptions to this Proposal for Decision should be filed in writing with the Office of Financial and Insurance Regulation, Division of Insurance, Attention: Dawn Kobus, P.O. Box 30220, Lansing, Michigan 48909, within twenty (20) days of the issuance of this Proposal for Decision. An opposing party may file a response within ten (10) days after Exceptions are filed.

A handwritten signature in cursive script, reading "Lauren G. Van Steel", is written over a horizontal line.

Lauren G. Van Steel
Administrative Law Judge